



International Child Abduction and Contact Conflicts



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Justice and Police
Federal Office of Justice



Practical information

Submitting a request for the return of a child

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Abductions in non-signatory states of the Hague Convention on International Child Abduction (for Swiss nationals)

Federal Department of Foreign Affairs (FDFA),
Consular Directorate
Tel. 0800 24 7 365

Abductions in non-signatory states of the Hague Convention on International Child Abduction

Swiss Foundation of the International Social Service, 9,
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Hofwiesenstrasse 3, 8057 Zurich
Tel.: +41 44 366 44 77, Fax +41 44 366 44 78
ssi@ssiss.ch, www.ssiss.ch

Information regarding foreign law

Swiss Institute for Comparative Law,
Dorigny, 1015 Lausanne
Tel.: +41 21 692 49 11, Fax: +41 21 692 49 49
Secretariat.isdc-dfjp@unil.ch, www.isdc.ch, info@isdc.ch

Advice for binational couples

Association of Counselling Agencies for Binational and Intercultural Couples and Families, www.binational.ch

Help finding a lawyer

Swiss Bar Association,
Marktgasse 4, Postfach 8321, 3001 Bern,
Tel.: +41 31 313 06 06, Fax: +41 31 313 06 16
www.swisslawyers.com

Reporting an offence

Any police station

Advice for victims of crime (Federal Act on the Provision of Support to Victims of Crime; Victim Support Act)

Cantonal victim support advice centres
www.opferhilfe-schweiz.ch

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The number of international child abductions is increasing due to a rise in the number of binational marriages and partnerships.

Introduction

If a child is taken or retained abroad by one of its parents or another person against the will of the other parent, for example following a vacation, those involved are often left feeling desperate and helpless. The same is true when a parent is prevented from or hindered in exercising his or her rights of access towards a child living abroad.

Switzerland is signatory to a series of international conventions which help to resolve such domestic conflicts. The Central Authority on International Child Abduction at the Federal Office of Justice works with its counterparts in other countries to resolve such disputes as quickly as possible and in the best interests of the child or children concerned.

A range of international conventions are designed to help combat international child abduction and protect access rights.



Legal bases

International conventions

The following conventions complement each other and make it possible to combat international child abduction effectively as well as ensure the protection of cross-border access rights.

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Hague Convention on International Child Abduction; SR 0.211.230.02)

This convention aims to ensure that children who have been wrongfully taken to or retained in a signatory country are returned immediately and that custody and rights of access which exist in one signatory country are applied in the other signatory countries.

European Convention of 20 May 1980 on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (European Custody Convention; SR 0.211.230.01)

This Convention aims to make it easier to recognise and enforce decisions concerning custody and rights of access.

Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague Child Protection Convention; SR 0.211.231.011)

This Convention aims to prevent legal conflicts between signatory states' authorities when measures are taken to protect children.

Federal Act

Federal Act on International Child Abduction and the Hague Convention for the Protection of Children and Adults (SR 211.222.32)

This Act has now significantly reduced the length of the return procedure as only one appeal can be made against a court decision. Children now have their own representative and amicable solutions can be found through mediation and conciliation procedures. In this way, court procedures and the enforcement of decisions, which are a burden to everyone involved, in particular the children, can be accelerated or at least conducted in a way that affects the children involved to a lesser extent.

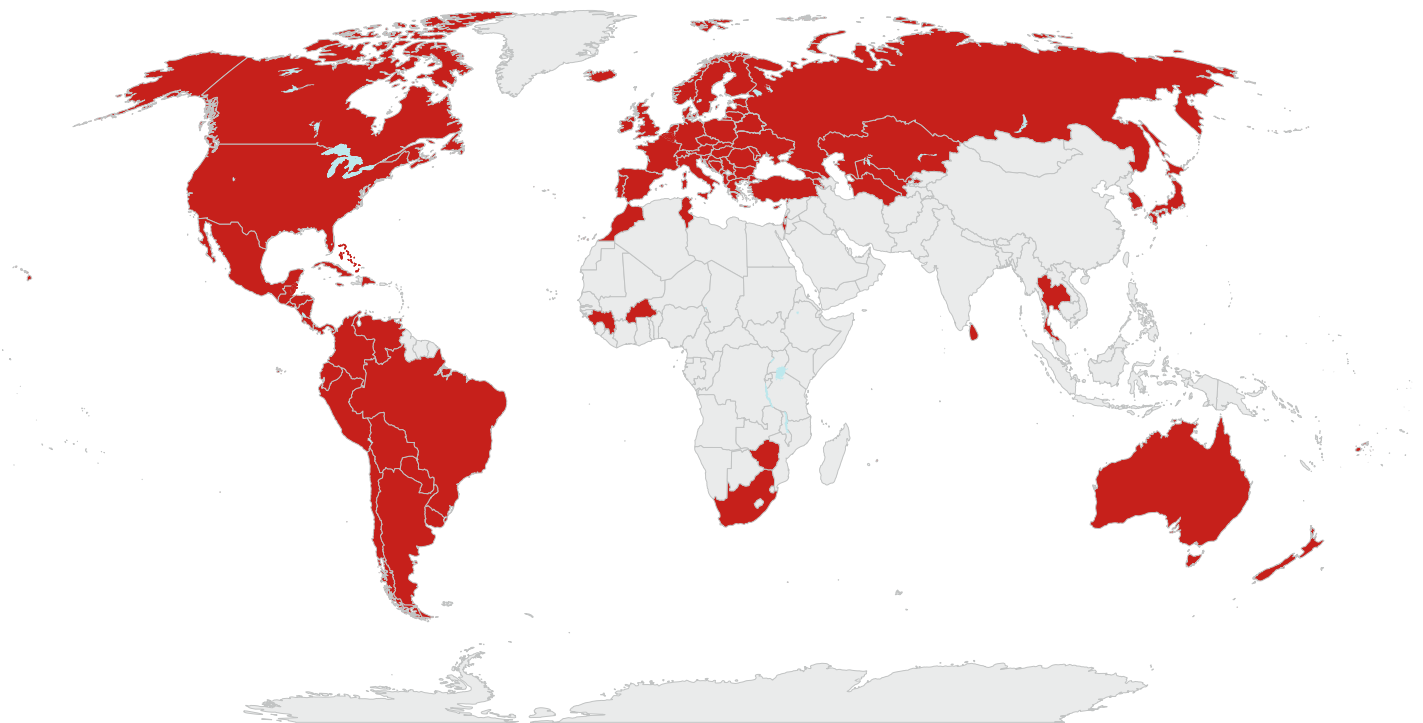
The legal texts can be found on the Internet at **www.admin.ch/ch/e/rs/rs**

Additional information can be found on the website of the Hague Conference:

www.hcch.net (Specialised Section on Child Abduction).

Hague Convention on International Child Abduction

The Hague Convention on International Child Abduction is in force between Switzerland and 87 other countries.



The Swiss Central Authority acts primarily on the basis of this Convention, which only applies between signatory states.

The procedure to have an abducted child returned can be instigated by the parent whose custody rights have been violated. The nationality of the child and parents is of no significance.

The following **requirements** must be met:

- The child is under the age of sixteen.
- Before the abduction took place, the child's habitual residence was in Switzerland or in another signatory country of the Hague Convention on International Child Abduction.
- At the time at which the abduction took place, the parent submitting the request had joint custody at least and had exercised joint custody up until that time.
- Less than a year has passed since the abduction took place.

If these requirements are met, the request is sent to the competent foreign central authority, which then

- finds out where the child is living,
- attempts to organise the voluntary return of the child, and if necessary
- sets in motion court proceedings to have the child returned.

The Hague Convention on Child Abduction is a purely civil agreement; if prosecution or criminal investigations are desired, an offence must be reported to the police.

The length and form of the return procedure depend to a large extent on the legal system in the country to which a request is made. In some cases, the procedure may be long, protracted and expensive. Furthermore, court proceedings can put great strain on all those involved, in particular children.

The court alone has the power to decide on whether a child is returned. The central authorities have no influence over this decision.

Child Abduction from Switzerland to a country abroad

The parent who remains in Switzerland after a child has been abducted to another signatory country can apply to the Swiss Central Authority or appeal directly to the foreign central authority or competent court. In Switzerland the Federal Office of Justice acts as the central authority. Application forms and further information can be found on the website of the Federal Office of Justice (www.bj.admin.ch).

Note that, according to the current legal practice of the Federal Supreme Court, the right of care over a child includes, in particular, the right to determine the place in which the child lives. This means that the parent with the right of care may, under normal circumstances, move abroad with the child without the agreement of the other parent.

The Swiss Central Authority passes the request on to the relevant central authority abroad, which then makes attempts to establish where the child is staying and to arrange the voluntary return of the child. If these attempts at conciliation fail, the central authority provides assistance in instigating court proceedings.

If the child is abducted to a country which is not a signatory to a convention dealing with such issues, there are very few legal options available.

A child is said to have been abducted when the right of a person to determine where the child lives is violated when the child is taken to or retained in a country abroad.

Child Abduction from abroad into Switzerland

If a child is abducted from a foreign signatory state into Switzerland, the parent who remains abroad can apply either to the local central authority or directly to the Swiss Central Authority and submit a request for the return of the child. The central authority organises mediation with the agreement of both parents. Since the central authority does not represent the applicant before the courts, at the applicant's request he or she is assigned legal representation.

A request for the return of a child can also be submitted directly to the competent Swiss court, without the involvement of the central authority.

If a child is abducted and brought into Switzerland, the **Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults** applies.

The Federal Act provides, among other things, that

- applications for the return of abducted children are processed by the Supreme Cantonal Courts as the only instance, and the only right of appeal is to the Federal Supreme Court;
- the court will initiate conciliation or mediation procedures with a view to obtaining the voluntary return of the child or achieving an amicable resolution of the dispute;
- the court will appoint a legal representative for the child and will hear the child in person, unless its age or other good cause renders this impractical;
- a single cantonal authority will be responsible for enforcing decisions relating to the return of children. The decision regarding the return of children applies throughout Switzerland.

Conciliation and Mediation Procedures

In the **mediation** procedure, parents try to find a solution to their conflict themselves, but with the help of a neutral and independent professional. In a **conciliation** procedure, solutions may be suggested to the parents.


Discussions are led by one or two professional counsellors, are confidential and should be completed within a few weeks. If the parties live a considerable distance apart, discussions may take place on the phone, via video link or Skype. If necessary further professionals (e.g. language or cultural interpreters) may be called upon.

The agreement reached is set out in writing and, depending on its content, can be approved by the authorities or the court.

Under the Federal Act on International Child Abduction, **in Switzerland** the basic principle applies that exhaustive attempts should be made at helping parents to reach an amicable agreement by themselves before court proceedings are initiated. The central authority may therefore organise an international family mediation procedure before court proceedings are initiated, provided no parent objects. Once the return procedure has been initiated, mediation or a conciliation procedure is mandatory.

In Switzerland there is a network of institutions and specialists qualified in conciliation and mediation, who may be called upon at short notice.

There are also possibilities for mediation in some **foreign signatory states** (e.g. Great Britain).



Conciliation procedures and mediation help parents to reach an amicable solution to their conflicts, in the interest of the children concerned.

Protection of cross-border rights of access

Parents who live in Switzerland and encounter difficulties in exercising their rights of access to a child living abroad can apply for protection of their international rights of access via the Swiss Central Authority. The same applies for parents living abroad who cannot visit their child in Switzerland, or are restricted in doing so.

The **Hague Convention on International Child Abduction**, the **European Custody Convention** and the **Hague Child Protection Convention** provide the legal basis for the procedure on the protection of international rights of access. These conventions are only in force between the signatory states.

In order for a request for protection of international rights of access under the Hague Convention to be made, both the parent with rights of access and the child must be resident in a country which is signatory to the Convention. Furthermore, the child must be under the age of sixteen. The nationality of the child and parents is of no significance.

In most cases, the competent authority (usually the youth welfare office) will attempt to bring about an amicable agreement. If this does not succeed, court proceedings are initiated. In an initial phase, restricted and supervised contact at the child's new place of residence is often permitted, which is then extended with time. The procedure for the protection of international rights of access usually lasts longer than the return procedure.

Costs

The services provided by the central authorities under the Hague Convention on International Child Abduction are free of charge. Court proceedings and the necessary legal representation are also free of charge, in the main.

However, the signatory countries can make the reservation that an exemption from costs only be granted in accordance with the country's own regulations regarding legal aid. These regulations vary from one country to another. Under Swiss law, legal aid is only granted when the applicant does not have sufficient financial means and the application has some prospect of success.

Switzerland has not reserved the right to charge costs, although many signatory states have. If a request is made by someone in a signatory country that reserves the right to charge costs, Switzerland will grant an exemption only in accordance with its own regulations regarding legal aid.

In general, the costs of mediation prior to the commencement of court proceedings are covered by the Central Authority.

The costs of exercising rights of access abroad must generally be met by the parent with rights of access.

The services of the central authorities are free of charge.

However, depending on the country, a return procedure before the courts may involve considerable costs.

Child abduction in non-signatory countries to the Hague Convention on International Child Abduction

The legal options in the case of abduction into a country that is not a signatory to the Hague Convention are very limited. Unlike under the Hague Convention, in such a case there are no procedures to facilitate dealings between the authorities of the different countries. This means that the Swiss Central Authority for the Handling of International Child Abductions does not have the legal power to demand the return of a child.

The parent whose child is abducted has the following options:

- If a criminal offence is reported, it may be possible to prevent the abducting parent and the child from leaving the country or to intercept them travelling through a country which is a signatory to the Hague Convention on International Child Abduction.
- Court decisions determining sole or joint custody may be recognised or enforced in the country to which the child has been abducted. This requires the involvement of a lawyer.
- The Swiss Institute for Comparative Law provides information about the legal situation in the country to which the child has been illegally taken (a fee is charged).
- The Swiss Foundation of the International Social Service (ISS), which has a network of branches, associated offices and correspondents in about 140 countries, deals with cross-border social and legal problems concerning children and their families. Local correspondents can help to gather information on the social condition and the situation of the child. They can help maintain the contacts between the child and the left-behind parent. ISS can mediate between the parents to find an agreed solution. ISS can also ensure a follow-up of the child's situation after his return.

Only limited means are available to obtain the return of the children in the case of abductions in non-signatory countries.


If **Swiss nationals** are involved, they can receive advice and support from the Consular Directorate of the Federal Department of Foreign Affairs (FDFA). The interests and welfare of the child are always central.

The following options exist and are in each individual case considered in consultation with the competent Swiss representation abroad (embassy or consulate). Parents can:

- seek advice on the options and restrictions from a legal perspective, and on the nature of the procedure and the chances and risks involved;
- be put in touch with trustworthy contact persons or lawyers in the foreign country, who are familiar with local circumstances;
- cooperate with the International Social Service;
- seek to contact the abducting parent and child or children;
- contact local child protection organisations;
- ask for diplomatic intervention with the competent authorities of the country to which the child has been taken;
- ask for support in ensuring that decisions and sentences passed locally are enforced.

It is not always possible for the FDFA to intervene. In particular it cannot:

- act in a sovereign capacity abroad, i.e. try to enforce Swiss court decisions in a foreign country. The law of the country concerned applies;
- impose sanctions on the foreign country;
- organise the illegal «re-abduction» of children or hide or shelter «re»-abducted children at the Swiss diplomatic mission;
- influence the legal process;
- become involved in negotiations between parents;
- bear any costs (travel or legal costs etc.).



Child abductions cannot be prevented, but there are ways of making them more difficult to carry out.

Preventive measures

It is difficult to prevent child abductions from taking place by legal or practical means. However, there are ways of reducing the risk.

Depending on the exact circumstances, the following **legal procedures** may be of use:

- Immediate, temporary court orders such as allocating the right of care to a sole parent, a ban on leaving the country or depositing travel documents;
- New custody arrangements;
- Restricting rights of access.

Depending on the legal situation, either the court or the guardianship authority at the child's place of residence has jurisdiction over these procedures.

There are also the following options:

- **Conciliation** by an advisory service (e.g. for binational couples, marriage and family counselling, the International Social Service) or an official authority (e.g. guardianship authority or youth welfare office at the child's place of residence) or **mediation** may help to prevent a child abduction, if the parents involved succeed in resolving their differences together.
- Keep the child's **travel documents** in a safe place. Inform the passport office that no new travel documents should be issued. If the child has dual nationality, the embassy or consulate of the foreign state in Switzerland can be informed that no travel documents should be issued for the child without the consent of the other parent.

- Do not leave the child unaccompanied and inform the **school** that there is the risk that he or she may be abducted.

- In cases of **domestic violence**, the police, women's refuge centres and competent victim support centres can provide information about other protection measures available (reporting an offence to the police, restriction orders, protection programmes, etc.).

- It is also worth having at the ready the **personal details** and an up-to-date photo of the child and the other parent, so that if an abduction takes place the police can rapidly instruct all border crossings and airports to retain the abducted child.

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